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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,296	09/29/2003	Michael Mittelstein	P03115	3208

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EXAMINER

GILLAN, RYAN P

ART UNIT	PAPER NUMBER
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3746

DATE MAILED: 10/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/673,296
Filing Date: September 29, 2003
Appellant(s): MITTELSTEIN ET AL.

MAILED

OCT 04 2006

GROUP 3700

Michael L. Smith

For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 8/31/06 appealing from the Office action mailed 4/18/06.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Steppe et al. (U.S. 4,713,051).

Steppe et al. in Figure 1 teach a peristaltic pump capable of being used in ophthalmic surgery comprising a housing (23), a pump head (labeled in Figure 1, Figure 12, 82) having a plurality of rollers (labeled in Figure 1, Figure 12, 82) held within the housing (23), and a backing plate (32) attached to the housing (when engaging cassette 20) and for cooperation with the pump head (labeled in Figure 1, Figure 12, 82). The device also includes a surgical cartridge or cassette (20) including a length of resilient tubing (labeled in Figure 1, Figure 12, 62) connected to a collection bag (see label in Figure 1) and for connection to a surgical aspiration (see label in Figure 1) device via additional tubing (see two types of tubing in the cartridge 20), and a cartridge holder (26) drawer (cartridge housing 28, 36 constitutes a drawer fitting into 26) for holding the surgical cartridge (20). As the cartridge (20) is inserted into holder (26), the pump head translates towards and away from the backing plate (linearly towards and away relative to the housing cartridge 20 and plate 32, and rotatingly relative to the housing 23). The drawer cartridge (28, 36) is moveable from an open position (see Figure 1) to an operative position (Figure 12), wherein the pump head (82) moves relative to the housing (23 rotates in housing) such that after the drawer moves from the open position (Figure 1) to the operative position (Figure 12), the pump head is moved toward the backing plate (32), such that the rollers and the backing plate (32) cooperate to peristaltically pump aspirant through the length of tubing as the pump head (82) is

rotated. In the open position, surgical tubing is easily inserted between the pump head (82) and the backing plate.

(10) Response to Argument

The Applicant argues with respect to claims 1-4 that Steppe et al. does not disclose the pump head moveable relative to the backing plate and the housing. The applicant concedes that the backing plate (32) moves relative to the pump head (82), during insertion, but then argues that the pump head (82) never moves relative to the backing plate (32). However, upon insertion of the backing plate, it can be viewed that either the backing plate is moving toward the pump head, relative the pump head, or the pump head is moving toward the backing plate, relative to the backing plate. This same line of reasoning is applicable in both directions, upon insertion and removal of the backing plate. Additionally, the pump head is attached to a spring biased plate (76) and therefore, is laterally moveable relative to the housing as well as rotationally moveable relative to the housing.

The Applicant further argues that the backing plate taught by Steppe et al. is not attached to the housing. However, once the backing plate is inserted every element of the pumping mechanism is attached to every other element, either directly or via other elements. Therefore, it can be concluded that after the insertion of the backing plate, it is attached to the housing, albeit via an intermediate element(s).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies

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(i.e., "a surgical cartridge that is separate from the backing plate") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The Applicant also argues that Steppe et al. fails to disclose a drawer. However, as cited above, the housing (28) and edge (36) form a drawer that enclose the cassette and is then inserted into slot (26). When the drawer is moved into an operative position, the spring-biased plate (76) moves the pump head (82) toward the backing plate (32).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

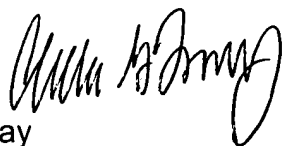
Respectfully submitted,

Ryan Gillan

A handwritten signature in black ink, appearing to read "Ryan Gillan", with a long horizontal flourish extending to the right.

Examiner Art Unit 3746

Conferees:

A handwritten signature in black ink, appearing to read "Charles Freay", with a stylized, cursive script.

Charles Freay

Primary Examiner Art Unit 3746

Louis Casaregola

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Primary Examiner Art Unit 3746